Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

G.M.H, PETITIONER

v.

FLORIDA BOARD OF BAR EXAMINERS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

May a State deny a multi-jurisdiction attorney-applicant, who passed that State's bar examinations and is admitted in the highest court of the land, the right to practice law in its courts and federal courts situated therein?

May a State deny admission to a multi-jurisdiction attorney-applicant because of a single federal lawsuit filed to vindicate matters the State delayed his admission to investigate?

May a State second-guess a parental decision, made after consulting a psychiatrist, a psychologist and three pastors, in a bar character and fitness review?

May a State require a trial by psychiatrist of unproven allegations as a condition of processing the application of a multi-jurisdiction attorney-applicant with no prior mental health history?

May a State delay a due process hearing so long it retires an application under its rules, effectively punishing the "foreign" applicant fifteen times more severely than its own local Bar members for the same alleged action, and then require a new application and fees for further "processing"?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

A. Factual Background 3

B. Proceedings Below 7

REASONS FOR GRANTING THE WRIT 13

A. A State cannot arbitrarily deny a multi-jurisdiction attorney, who passed the State's bar examinations and is admitted in the highest court of the land, the right to practice law 14

B. A State cannot arbitrarily exclude attorneys from the State Bar for exercising constitutional rights. 15

1. Denying bar admission for filing a single lawsuit violates the First and Fourteenth Amendments 17

2. Conducting a trial by psychiatrist of unproven allegations as part of a bar character review violates the Ninth and Fourteenth Amendments. 18

3. Second guessing a parental decision, vetted with a psychiatrist, psychologist and three pastors, in a bar character review is constitutionally impermissible. 22

C. Denying due process so long that a bar application is rendered "stale" and retired under State rules, thereby substantively punishing the "foreign" attorney fifteen times more than its own attorneys for the same alleged act, violates the Fourteenth Amendment. 23

D. Denying bar admission to a multi-jurisdiction attorney-applicant when no reasonable man reviewing the evidence can fairly find substantial doubts about the applicant's honesty, fairness and respect for others and for the laws of the state and nation, violates the Fourteenth Amendment. 25

CONCLUSION 27

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

U.S. CONST. ART. IV, SECT. 2 14
U.S. CONST. ART. VI 2, 15
U.S. CONST. AMEND. I 2, 17
U.S. CONST. AMEND. IX 2, 19
U.S. CONST. AMEND. XIV, SECT. 1 ..... 2, 15
FL. CONST. ART. I, SECT. 23 20

STATUTES

28 U.S.C. § 2072(a) 2, 15
28 U.S.C. 1257(a) 1
O.C.G.A. § 15-11-28(c)(1) 10

CASES

Addington v. Texas, 441 U.S. 418 (1979) 19
Armstrong v. Manzo, 380 U.S. 545 (1965) 24
Baird v. State Bar of Aiz., 401 U.S. 1 (1971) ..... *passim*
Barry v. Barchi, 443 U.S. 55 (1979) 24
BE & K Construction v.N.L.R.B., 536 U.S. 516 (2002) 18
Bell v. Nat'l Republican Cong. Comm., 187 F.Supp. 605 (S.D. W.Va. 2002) 10
Bill Johnson's Restaurants, Inc. v. N.L.R.B., 461 U.S. 731 (1983) 18
Clark v. Virginia Bd. of Bar Examiners, 880 F.Supp. 430 (E.D. Va. 1995) 19

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985) 24

De Jonge v. Oregon, 299 U.S. 353 (1937) 17

Ellen S. v. Florida Bd. of Bar Examiners, 859 F.Supp. 1489 (S.D. Fla. 1994) 19

Ex parte Garland, 71 U.S. 333 (1866) 14

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) 11, 18

Fla. Bar v. Committe, 916 So.2d 741 (Fla. 2005) 25

Fla. Bar v. Kelly, 813 So.2d 85 (Fla. 2002) 25

Fla. Bar v. Rapoport, 845 So.2d 874 (Fla. 2003) 15

Fla. Bar v. Richardson, 591 So.2d 908 (Fla. 1991) 25

Fla. Bar v. Walton, 2006 WL 3627029 (Fla. 2006) 25

Frazier v. Heebe, 482 U.S. 641 (1987) 15

Griswold v. Connecticut, 381 U.S. 479 (1965) 19

Honzawa v. Honzawa, 268 A.D.2d 327 (N.Y. App. Div. 2000), 309 A.D.2d 629 (N.Y. App. Div. 2003) 10

In re G'dianship of Browning, 568 So.2d 4 (Fla. 1990) 20

In re Petition of Frickey, 1994 WL 183523 (Minn. 1994) 19

In re T.R., 731 A.2d 1276 (Pa. 1999) 19

Johnson v. Avery, 393 U.S. 483 (1969) 17

Konigsberg v. The State Bar of California, 353 U.S. 252 (1957) 1, 15, 16, 17, 26

Lambert v. Wise, Philadelphia, Pa., Ct. C.P. Nos. 2988, 2989, 2291 (Aug. 14, 2002) 10

Leclerc v. Webb, 127 S.Ct. 344 (2006) (No. 06-11) 14

Lewis v. Winzenreid, 435 S.E.2d 602 (Ga. 1993) 10

Long Beach City Employees Assoc. v. City of Long Beach, 719 P.2d 660 (1986) 19

Matter of Respondent B, 1991 WL 63245 (Cal. Bar Ct. 1991) 19

Matter of The Florida Bar, 338 So.2d 205 (Fla. 1976) . 20

Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990) 18

New York Times Co. v. Sullivan, 376 U.S. 254 (1964). 17

Parham v. J.R., 442 U.S. 584 (1979) 18

Pitman v. Pittman-Grayson, 149 F.3d 111 (2d Cir. 1998) 11

Robinson v. Becker, 595 S.E.2d 319 (Ga. App. 2004) ... 10

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) 1, 16, 23

Sinclair Refining Co. v. Jenkins Petroleum Process Co., 289 U.S. 689 (1933) 10

Singletary v. Costello, 665 So.2d 1099 (Fla. 4th DCA 1996) 20

Smith v. Schlesinger, 513 F.2d 462 (D.C. Cir. 1975)..... 19

Sperry v. State of Fla. ex rel. Fla. Bar, 373 U.S. 379 (1963) 15

Stump v. Sparkman, 435 U.S. 349 (1978) 10

Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985) 14

Troxel v. Granville, 530 U.S. 57 (2000) 22

U.S. Petition to Amend Rule 38(a), No. R-06-0002 (Az. Feb. 9, 2006) 14

United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, 389 U.S. 217 (1967) 17

Wallace v. Calogero, 127 S.Ct. 344 (2006) (No. 05-1645) 14

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) 22

Westmoreland v. CBS, Inc., 596 F. Supp. 1170 (S.D. N.Y. 1984) 10

Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963) 1, 21

WJLA-TV v. Levin, 564 S.E.2d 383 (W.Va. 2002) 10

RULES

U.S.S.CT.R. 16 13

FL.S.CT.R.A.B. 1-61 1

FL.S.CT. R.A.B.2-29 12

FL.S.CT. R.A.B. 4-18.2 13

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Othello, Act III, scene iii. 18

Proverbs 22:1 18

Revelation 21:8 23

Thomas Pobjecky, Everything You Wanted to Know About Bar Admissions and Psychiatric Problems But Were Too Paranoid to Ask, The Bar Examiner (1989) 19

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United States Department of Commerce, Bureau of Economic Analysis, Private Services Trade by Type, 1992-2003 14

OPINIONS BELOW

The Florida Supreme Court's October 6, 2006 two-sentence confidential order is unreported and reprinted in the Appendix at 1a. The Board's June 1, 2005 two-sentence confidential order is unreported and reprinted in the Appendix at 2a.[1]

JURISDICTION

Jurisdiction for review of the actions of the Board and the Florida Supreme Court,[2] which decided important federal questions in a way that conflicts with decisions of this Court, including *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957), *Konigsberg v. The State Bar of California*, 353 U.S. 252 (1957), *Baird v. State Bar of Ariz.*, 401 U.S. 1 (1971) and *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963) and other decisions set forth below, is proper under 28 U.S.C. 1257(a).[3]

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[1]Proceedings below are confidential under FL.S.CT.R.A.B. 1-61, and include matters **under seal** and confidential by court order.

[2]The constitutional claims made herein (except the claim of right of an attorney to practice law in Florida federal courts after passing the bar examination, but before admission to the Florida Bar) were raised in the June 2006 Petition, the April 2005 Motion to Dismiss, R3Supp.1, T2005, I34, and the February 2005 Answer and Defenses. R3, T15. Citations to the 2,200-plus page record in the Florida Supreme Court: R_T_I_(R=volume, T=tab, and I=item as indexed in each tab).

[3]The Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice of the Eleventh Circuit, extended the time in which to file a petition for certiorari up to and including March 5, 2007.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. U.S. CONST. ART. VI.

Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech, or of . . . the right of the people . . . to petition the Government for a redress of grievances. U.S. CONST. AMEND. I.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. U.S. CONST. AMEND. IX.

No State shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. AMEND. XIV, SECT. 1.

The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and courts of appeals. 28 U.S.C. § 2072(a).

STATEMENT OF THE CASE

45 months have slogged away since the multi-jurisdiction attorney-applicant ("Abe" herein) filed his application for admission to the Florida Bar in May

2003. R3Supp.2, T2. The Board has failed to provide Abe with a full due process hearing, substantively denying him admission. The Board asserts that a federal lawsuit filed by Abe, R3Supp.2, T6, as a direct result of the Board's insistence that Abe prove his innocence of unproven allegations, is grounds to deny him admission. R3, T20.

A. Factual Background

Since graduating *Order of the Coif* from a top tier law school in 1996, R3, T9,[4] Abe's character and fitness has been vetted favorably by the National Conference of Bar Examiners (1996, 2002) and by an independent State Bar investigation (2002). R5, T3, 4. His character and fitness for a Top Secret security clearance was vetted favorably by the United States in 1987. R5, T11. Abe has never had an ethics complaint filed against him or been subject to any disciplinary action.

Distinguished members of the Florida, Oklahoma and Mississippi Bars who worked closely with Abe, former employers, professors, physicians, ministers, neighbors and others have this to say about Abe:

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[4]Abe grew up in the home of hard-working, honest blue-collar workers, worked as a fabricator/welder for several years and then served his country honorably for 6 years in the United States Navy and for another 3½ years in the Department of Defense. Abe worked full-time and attended college at night to become the first person in his family to earn a college degree, scored in the 95th percentile on the LSAT and excelled in law school (earning top grades in several classes and writing a prize-winning paper).

1. Attorney "Steve" is a 24-year AV-rated Florida lawyer and managing partner of the nationally ranked Florida specialty litigation firm at which Abe worked from May 2003 until November 2004. Steve characterizes Abe's legal research and analytical skills as those of "an experienced, capable lawyer", and recommends Abe for admission to the Florida Bar believing "he will make a valuable member of our bar." R2, T2.

2. Professor "J" is an internationally respected scholar and professor of law who holds a formal chair at a top American law school. Professor J, who taught Abe three semesters in law school, remembers Abe as a "brilliant" student with "strength of character" and "personal integrity". Professor J described Abe's law review article as a "standard reference".[5] Professor J recommends Abe "wholeheartedly and without reservation" for admission to the Florida Bar and certified that he is qualified "in terms of skills, knowledge and moral and ethical standards." R2, T3.[6]

3. Attorney "Pete" is a 46-year AV-rated Oklahoma lawyer, former judge and member of the National Panel of Construction Arbitrators for the American Arbitration Association. Attorney "Trent" is a 15-year AV-rated Oklahoma lawyer and former

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[5]Abe's law review article is cited in 15 major law reviews and listed as a reference on a course syllabus at Harvard Law School. R2, T3.

[6]Professor "F" is an internationally respected scholar and professor of law at a top tier law school who taught and supervised Abe as a research assistant and in a civil practice clinic. Professor F recommends Abe for admission to the Florida Bar, noting he is "fully fit for the practice of law." R2, T5.

member of the ATLA National Trial Team. Both Pete and Trent, who interacted with Abe daily from May 2002 through April 2003, "highly recommend Abe as an attorney." R2, T4, R3, T7.

4. Attorney "Bill" is a 30-year AV-rated Mississippi lawyer who, based upon his daily observations of Abe's work and character for 36 months, which he found "exceptional" and "exemplary by all measures", "highly recommend[s]" Abe for admission to the Florida Bar. R2, T6.[7]

5. Abe served honorably in the United States Navy for 6 years, undergoing an extensive background investigation resulting in a Top Secret security clearance. R5, T4, 11. Abe's character and integrity were consistently recognized by his superior officers. R3, T11-12.[8]

6. Professor "Mike", Abe's undergraduate advisor and professor, vouched for Abe's "integrity,

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[7]Attorney "Mike" is 36-year AV-rated attorney who dictated a memo to Abe's personnel file to record Abe's ability to produce work as a first-year lawyer that "would [be] a compliment to a lawyer with considerably more experience. . .." R3, T10. Based upon their observations of Abe's work and character for over 5 ½ years, Judge "R", a 33-year practitioner and former general jurisdiction judge, and Attorney "D", a 16-year AV-rated Mississippi lawyer, certified Abe's good moral character. R3, T8.

[8]Vice-Admiral "RD" and Captain "GLB" issued Abe Letters of Commendation and Appreciation, respectively, for his outstanding performance. Lieutenant Commander "RFL" described Abe as a person of "outstanding character" and "a true professional in all respects." Lieutenant "MLM" described Abe as "a man of integrity." Abe's Good Conduct Award is emblazoned by these apt words: "Fidelity, Zeal and Obedience". R3, T11.

honesty and forthrightness" and stated that Abe could always be counted on to "do what is right." R3, T12.[9]

7. Pastor "Mike", Abe's current pastor, has been serving in the ministry for 14 years, is the senior pastor at Abe's home church and was Abe's children's and second wife's pastor. Pastor Mike attests to Abe's "character and moral fitness to practice law" and "highly recommend[s Abe] for admission to the Florida Bar." R3, T23.[10]

8. Dr. "Mark", a Board Certified Florida and South Dakota psychiatrist, rendered a 14-page medical opinion opining that Abe showed "tremendous character and commitment to his Christian faith and to his family" and is "emotionally [and] psychologically capable [and] qualified to practice law in the State of Florida unsupervised, without any conditions or restrictions." R5, T9, 30.

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[9]"Sterling", Abe's day-to-day supervisor at DOD, supports Abe's admission to the Florida Bar and describes Abe as "highly respected", and as having "excellent judgment in the diplomatic handling of problems." R3, T12. By affidavit, Florida mortgage broker "Helen" testified to Abe's "good moral character" and "highly recommend[s Abe] for admission to the Florida Bar." R3, T23. Pastor David, Dean and Instructor at a Christian university and senior pastor at Abe's Florida church home, testified by affidavit of Abe's "gentle and caring heart", "tremendous character" and Abe's fitness for the Florida Bar. R5, T26.

[10]Pastor Mike stated it plainly: "I do not know what the Florida bar expects to find in the character of a man . . . but I find it hard to believe that very many applicants have 'walked through the fire' [Abe] has . . . with one-half the character and integrity that he has shown." R3, T23.

9. Dr. "Alexander", a Board certified child, adolescent and adult psychiatrist, licensed in Georgia, Alabama and Mississippi, assessed and treated Abe's daughter in 2001 and spent 180 minutes with Abe in 2006. In his medical opinion, Abe is "psychiatrically, psychologically and emotionally fit to practice law in the State of Florida (or any other state) without any supervision, restrictions or conditions." R3, T23.

B. Proceedings Below

1. Abe filed his Florida bar application in May 2003, and took and passed the Florida bar examinations in July 2003. R3Supp.2, T2. Abe self-reported false allegations made by his ex-wife in an ex parte juvenile court "custody" proceeding, discovered after completing his bar application, on September 14, 2003. R3Supp.1, T2003, I1. On December 17, 2003, and on February 13, 2004, Abe requested the Oath of Attorney to practice law in Florida. R3Supp.1, T2003, I6, T2004, I7. By Notice dated February 17, 2004, the Board required Abe to submit to a medically invasive psychiatric/psychological evaluation (to investigate the allegations) as a condition of further processing his application. R3Supp.1, T2004, I8.

2. On June 28, 2004, Abe objected to the evaluation and the Board's refusal to provide documents related thereto, and notified the Board of his intention to file a lawsuit to vindicate himself of the allegations the Board was focused upon. R3Supp.1, T2004, I15. Abe sought provisional admission to avoid interference with his career and ability to support his children. *Id.*

3. On August 13, 2004, the Board required Abe to appear at an investigative hearing regarding allegations made in divorce and child custody proceedings and results of the Board's psychiatric evaluation (investigation). Abe requested 3 hours to make his presentation, R3Supp.1, T2004, I17; he was given less than 15 minutes.

4. The 15-month delay and the Board's focus on the allegations further persuaded Abe that the Board was going to require him to prove his innocence. Accordingly, Abe spent hundreds of hours researching and preparing a 41-page verified complaint to bring the actors to court (filed but not served before the hearing), R3Supp.2, T6, 180 minutes with a licensed Florida psychologist (Dr. "Michael", R5, T10) and 210 minutes with Dr. "Mark" (R5, T9) who each respectively reviewed over 2,000 pages of pertinent materials, provided an 8-page psychological evaluation, R5, T31, and a 14-page medical opinion rejecting the allegations and opining that Abe was fit to practice law. R5, T30.[11]

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[11]In addition to Dr. "Alexander", who opined that Abe's ex-wife's "neglect and abuse" of Abe's daughter "significantly contributed to her current personality disorder" and to her "prototypical borderline personality reaction . . . turning on her father", R3, T23, and Drs. "Mark" and "Michael", who reject the allegations, R5, T31, R5, T30, Counselor "Sue", M.S.C.Ed., M.S. Th., testified by affidavit, based upon 25 hours with Abe and his daughter, review of documentation provided to the Board and 17 years' experience, of Abe's character and fitness to practice law and her disbelief of the allegations. R3, T23. Principal "Dawn", B.S.Ed., M.S. Ed., S. Ed., who taught Abe's children and kept them while Abe was away on business, testified by affidavit that Abe was a "good and devoted father", an "exemplary single parent", and that she did not believe the allegations. R5, T20. Neighbor "Donna", a grandmother, next-door neighbor and caregiver of Abe's children

5. On September 15, 2004 (six days after the scant 15 minutes Abe was given to present his case to the investigative hearing panel, characterized by the Chairman as a "deposition"), the Board apprised Abe it had "decided to prepare and file Specifications" against him on unspecified grounds. R3Supp.1, T2004, I19.[12] On November 24, 2004, Abe notified the Board that the delay was forcing him to leave his job in Florida. R3Supp.1, T2004, I23.

6. After delaying Abe's bar application for 18 months, on December 11, 2004, the Board issued a specification against Abe alleging that the lawsuit (filed because of the pressure from the Board to prove his innocence) was unprofessional, vexatious, harassing and constituted an abuse of process. R3, T20.

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during the time of the alleged conduct, testified by affidavit of her disbelief of the allegations and described Abe as a "gentle and caring" father. R5, T19. "Doris", a great grandmother and House Mother for a home for abused children at which Abe and his children ministered, testified by affidavit that she "never saw a man who loved his children more than [Abe]" and of her disbelief of the allegations. R5, T21. Neighbor "Sandra", mother of Abe's daughter's best friend whose child interacted frequently with Abe, testified that Abe was a "devoted father and Christian man" and that she did not believe the allegations "for a second". R5, T23.

[12]Abe served the lawsuit two weeks later. R3Supp.1, T2004, I20-21. The Board knew of Abe's intention to file, and filing of, the lawsuit, and that the delays in processing his application resulting from the Board's focus on the allegation were threatening his ability to support his children. R3Supp.1, T2004, I15. The investigative hearing panel clearly understood that Abe had not served the lawsuit. R5 (Hearing Transcript at p. 82, ll.11-12). At no time before or after the filing of the federal lawsuit did the Board state that it would issue a "specification" against Abe if he filed or served the lawsuit.

7. The Board asserted that Abe's claims against a juvenile court judge, who changed custody of his children ex parte (without subject matter jurisdiction to do so[13]), were not well-grounded, that naming his daughter was against her best interests (her treating child psychiatrist flatly rejects this contention) and that Abe could not reasonably claim $110M in damages.[14]

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[13]As explained in the 220-plus pages of briefing submitted in the federal lawsuit, R4, T1-3, Georgia juvenile courts are courts of limited jurisdiction with no original subject matter jurisdiction over custody disputes, regardless of how such disputes are formally labeled, unless first transferred from a Superior Court, which did not occur in Abe's case. O.C.G.A. § 15-11-28(c)(1); *Lewis v. Winzenreid*, 435 S.E.2d 602, 604 (Ga. 1993) (juvenile courts have limited jurisdiction and cannot entertain "deprivation" proceedings by non-custodial parents to obtain custody from non-resident custodial parents). Abe's facts were virtually identical to those in *Lewis*, a decision published 10 years before the juvenile judge (without having laid eyes on his children or him) changed custody of Abe's children in an ex parte "deprivation" proceeding brought by his ex-wife in her mother's name. Judges who act, as the juvenile court judge did, in clear absence of jurisdiction are liable for their actions. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Robinson v. Becker*, 595 S.E.2d 319 (Ga. App. 2004).

[14]The complaint left the issue of damages, a non-traversable allegation, *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 289 U.S. 689 (1933), to the jury. R3Supp.2, T6. The Board was provided with numerous comparable authorities. *See* R1 (Brief in Support of Motion to Dismiss, chart insert at pp. 57-59 comparing *Westmoreland v. CBS, Inc.*, 596 F. Supp. 1170 (S.D. N.Y. 1984) ($120M libel); *Lambert v. Wise, Philadelphia*, Pa., Ct. C.P. Nos. 2988, 2989, 2291 (Aug. 14, 2002) ($40.8M libel and conspiracy); *Honzawa v. Honzawa*, 268 A.D.2d 327 (N.Y. App. Div. 2000), 309 A.D.2d 629 (N.Y. App. Div. 2003) ($500M malicious prosecution and abuse of process against family member and law firm); *WJLA-TV v. Levin*, 564 S.E.2d 383 (W.Va. 2002) ($30M defamation—allegation of sexual assault); *Bell v. Nat'l Republican Cong. Comm.*, 187 F.Supp. 605 (S.D. W.Va. 2002) ($10M libel); *Pitman v.*

8. Abe timely answered the sole specification on February 25, 2005, R3, T15 (pp. 35-42), and then by Motion to Dismiss on April 28, 2005. R3Supp.1, T2005, I34. The Board summarily denied Abe's Motion to Dismiss on June 1, 2005. App. at 2a. Between March 2005 and August 2005, Abe made 14 written requests for a formal hearing (including by formal motion never ruled upon, R3Supp.1, T2005, I43)[15], provided hundreds of pages of additional supporting documentation, including the extensive briefing in the federal lawsuit (the "Briefs"[16]) and additional character recommendations, before a formal hearing was finally scheduled some 29 months after he filed his bar application.

9. Abe received 17-days written notice of the scheduled October 21, 2005 formal hearing. R3Supp.1, T2005, I65. Three days later, Abe delivered 21 bound

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Pittman-Grayson, 149 F.3d 111 (2d Cir. 1998) ($15M intentional interference with custody) in tabular form with Abe's claims).

[15]R3Supp.1, T2005, I24, 27-28-31, 39-41, 43, 51, 53-55, 57-58, 60.

[16]The federal district court dismissed the lawsuit on motions for summary judgment, but did not find it frivolous and ultimately rejected the defendants' motion for costs. In its 86-page opinion dismissing the counts against the juvenile court judge on grounds of judicial and Eleventh Amendment immunity, and dismissing the counts against the remaining defendants on the ground of the so-called Rooker-Feldman doctrine, the district court opined that the juvenile court "deprivation" proceeding, in which Abe had never been served or made an appearance, which was dismissed with prejudice by the defendants in Abe's favor, precluded him from suing them in federal court. R3Supp.2, T6. In so doing, the district court rejected arguments made by Abe in the Briefs, R4, T1-3, that embraced the rationale of this Court's unanimous decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), rendered weeks after the dismissal.

volumes of exhibits to the Board. R3Supp.1, T2005, I69. Six days after delivering the exhibits, the Board left Abe a voice mail stating that "certain" exhibits "arrived too late to be provided to the hearing panel." Despite repeated written requests, R3Supp.1, T2005, I72, 72, 79, Abe was not told of the removal of the critical Briefs (provided 4 months earlier) until the day before the formal hearing, after driving over 1,000 miles.[17]

10. After a closed executive session, the hearing panel denied Abe's motion to admit the critical Briefs. R3Supp.1, T2005, I75 (motion); R3Supp.1, T2005, I76 (Aborted Hearing Transcript at p. 12, l.24-p.13, l.2; p. 14, ll. 4-6). Given the refusal to consider the critical Briefs, Abe was given a continuance with an on-the-record assurance that a formal hearing would be scheduled at the "earliest practicable time." *Id.* at p. 19, ll.8-9.

11. After repeated requests for a formal hearing were denied, the Board informed Abe that his bar application became "stale" in May 2006 under FL.S.CT.R.A.B. 2-29, demanded he pay a "stale" file fee, submit a new bar application, fingerprint card and releases to "re-investigate" him. R3Supp.1, T2005, I111. Abe petitioned the Florida Supreme Court for relief, which summarily denied his Petition without a hearing.

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[17]The critical 220-plus page Briefs, analyzing the federal lawsuit upon which the sole specification is based, were provided August 23, 2005, 4 months before the formal hearing. R3Supp.1, T2005, I62 (transmittal letter); R4, T1-3 (Briefs). The Board belatedly justified removing the critical Briefs from Abe's exhibits by a quizzical statement: "Due process required fair notice to the Office of General Counsel as well as the applicant." R3Supp.1, T2005, I84 (p.3, ¶4).

App. at 1a. On February 7, 2007, Abe again paid the "stale" file fee, provided a new fingerprint card, releases and a complete application update. On February 16, 2007, the Board returned Abe's "stale" file fee, fingerprint card, releases and application update, refusing to "initiate the updated investigation" until Abe typed out a new bar application, further denying Abe due process by imposing yet another meaningless procedural hurdle.[18]

REASONS FOR GRANTING THE WRIT

Abe humbly submits that the writ should be summarily disposed of on the merits under U.S.S.CT.R. 16 for four principal reasons. First, denying a multi-jurisdiction attorney, admitted to the highest court of the land, the right to practice law violates the Fourteenth Amendment. Second, denying admission for exercising the right to petition for redress and exercising fundamental parental rights violates the First and Fourteenth Amendments. Third, denying a due process hearing violates the Fourteenth Amendment. Fourth, no reasonable man viewing the evidence can fairly find "substantial doubts about [Abe's] honesty, fairness and respect for the rights of others and for the laws of the state and nation."

A. A State cannot arbitrarily deny a multi-jurisdiction attorney, who passed the State's bar examinations and is admitted in the highest court of the land, the right to practice law.

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[18]Abe's examination results will become "stale" in May 2008. FL.S.CT. R.A.B. 4-18.2.

This Court has invited the Solicitor General to brief two pending bar admission cases regarding provincial restrictions on the practice of law by foreign attorneys. *Wallace v. Calogero*, 127 S.Ct. 344 (2006) (No. 05-1645); *Leclerc v. Webb*, 127 S.Ct. 344 (2006) (No. 06-11). The United States has a petition before the Arizona Supreme Court to exempt its attorneys from the burdens of pro hac vice admission/association of local counsel. *U.S.Petition to Amend Rule 38(a)*, No. R-06-0002 (Az. Feb. 9, 2006). The fundamental right of an attorney to practice law[19] is an important issue of national and international economic significance,[20] not one of provincial grace to be arbitrarily dispensed by States[21] in practically unreviewable ad hoc decisions.

Abe is a member in good standing of three State Bars, R5, T3, and has been a member of the Bar of this Honorable Court in good standing since 2000, R3, T2, when he was sponsored by a former law clerk of this Court who was subsequently nominated for a seat on a United States Court of Appeals. Yet Florida has denied Abe admission without a full due process hearing for 45 months. Abe respectfully submits that

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[19]*Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 281 (1985) (practice of law a fundamental right protected by the Privileges and Immunities Clause, U.S. CONST. ART. IV, SECT. 2).

[20]*See Laurel S. Terry, Lawyers, GATS, and the WTO Accounting Disciplines*, 22 Penn. St. Int'l. L. Rev. 695, 718 n.74 (2004) (U.S. exported $3.38 billion in legal services in 2003) (citing *United States Department of Commerce, Bureau of Economic Analysis, Table 1, Private Services Trade by Type*, 1992-2003); *Carole Silver, Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. Int'l L. & Bus. 487, 489 (2003).

[21]*Ex parte Garland*, 71 U.S. 333, 379 (1866) (office of attorney not conferred as a mere act of grace).

his qualifications to practice law in the highest court of the land should end the matter, at least insofar as practice in Florida federal courts is concerned. U.S. CONST. AMEND. XIV, SECT. 1; U.S. CONST. ART. VI.[22]

B. A State cannot arbitrarily exclude attorneys from the State Bar for exercising constitutional rights.

States cannot exclude persons from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection Clauses. U.S. CONST. AMEND. XIV, SECT. 1; *Schware*, 353 U.S. at 239. Nor can States exclude persons from the practice of law for exercising federal constitutional rights or for reasons that violate federal law. *Konigsberg*, 353 U.S. at 272; *Baird*, 401 U.S. at 10 (error to refuse to process application and not to admit to Bar).

In *Schware*, this Court reversed a State's denial of admission because "[t]here [was] no evidence in the record which rationally justifie[d] a finding that [the applicant] was morally unfit to practice law." *Schware*, 353 U.S. at 246-247 (emphasis supplied). This Court

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[22]*Compare Frazier v. Heebe*, 482 U.S. 641 (1987) (exercising supervisory powers under 28 U.S.C. § 2072(a) to reverse residency requirement imposed by federal district court, noting "there is no reason to believe that nonresident attorneys who have passed [a State's] bar examination are less competent than resident attorneys") *and Sperry v. State of Fla. ex rel. Fla. Bar*, 373 U.S. 379 (1963) (reversing injunction against non-Florida lawyer practicing patent law in Florida) *with Fla. Bar v. Rapoport*, 845 So.2d 874 (Fla. 2003) (Washington, D.C. lawyer, who was a member in good standing of this Court's Bar, enjoined from practicing federal securities arbitration in Florida).

rejected contentions that the applicant's arrests for offenses for which he neither was tried nor convicted, use of an assumed name and a former political party membership, were sufficient to overcome the applicant's evidence of good reputation and character among his teachers, fellow students and in his synagogue. *Id.* at 246.

In *Konigsberg*, this Court held that a State's arbitrary and discriminatory refusal to admit an applicant violated his due process and equal protection rights. *Konigsberg*, 353 U.S. at 262. This Court again found that the evidence did not rationally support the grounds upon which the State relied upon to reject admission: alleged political party membership and severe criticism of the government. *Id.* at 267-74.

In *Baird*, this Court held that a State's refusal to process an applicant's bar application (for refusing to answer a question on First Amendment grounds) and failure to admit the applicant to the Bar, where there was no record evidence that the applicant was morally and professionally unfit, was error. *Baird*, 401 U.S. at 10 ("The practice of law is . . . a matter . . . of right for one who is qualified by his learning and his moral character.").

1. Denying bar admission for filing a single lawsuit violates the First and Fourteenth Amendments.

The Board's sole articulated, though arbitrary, basis for denying Abe a license to practice law is a federal lawsuit Abe filed to vindicate matters the Board

required Abe to undergo a stigmatizing psychiatric evaluation to investigate.

The prosecution of a lawsuit, whether for damages or vindication of the truth, furthers precious and fundamental constitutional rights upon which our honorable profession rests. U.S. CONST. AMEND. I ("Congress shall make no law . . . abridging the freedom of speech . . . or of . . . the people . . . to petition the Government for a redress of grievances."); *see Johnson v. Avery*, 393 U.S. 483, 498 n.24 (1969) (reasonable access to courts is fundamental right); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967) (right to petition among most precious of liberties).[23]

The First Amendment right to petition through private litigation extends to the constitutionally protected interests of compensation, vindication of one's name and reputation,[24] evolution of the law and avoiding force and violence by resorting to the courts. *Compare Bill Johnson's Restaurants, Inc. v. N.L.R.B.*,

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[23]Citizens cannot, except in the most extreme circumstances, be punished for exercising the precious right to petition "without violating . . . fundamental principles of liberty and justice. . .." *Cf. De Jonge v. Oregon*, 299 U.S. 353, 364 (1937) (right to assemble); *New York Times v. Sullivan*, 376 U.S. 254, 270-71 (1964) ("[E]xercise of the right to petition 'may well include vehement, caustic, and . . . sharp attacks on government and public officials. . .."); *Konigsberg*, 353 U.S. at 273 (Lawyers must be "free to think, speak, and act as members of an Independent Bar.").

[24]Abe's faith places a higher value on a good name than great riches. *Proverbs* 22:1; *compare Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 12 (1990) (He who "filches from me my good name[,] [r]obs me of that which not enriches him, [a]nd makes me poor indeed.") (quoting *Othello*, Act III, scene iii,).

461 U.S. 731, 743 (1983) *with BE & K Construction v.N.L.R.B.*, 536 U.S. 516, 531-33 (2002). The First Amendment does not require successful petitioning. *Id.* at 536 U.S. at 531-33.

A reasonable legal mind cannot view the well-pled, verified complaint, supporting Briefs (embracing the rationale of this Court's later unanimous 2005 *Exxon Mobil* decision), supporting medical opinions and affidavits, and 86-page opinion of the district court, R5, T30-31, R3, T23, R3Supp.2, T6, which did not find the lawsuit to be frivolous and ultimately denied costs to the defendants, and conclude that the lawsuit provides a rational basis to deny Abe admission to any Bar.

2. Conducting a trial by psychiatrist of unproven allegations as part of a bar character review violates the Ninth and Fourteenth Amendments.

Regardless of whether a State could require all applicants to undergo a full psychiatric evaluation as a condition of admission and still pass muster under a compelling interest,[25] rational basis[26] or equal protection

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[25]There is a substantial liberty interest in avoiding the stigma of being treated for a mental illness. *Cf. Parham v. J.R.*, 442 U.S. 584 (1979) (child's interest in avoiding erroneous mental health commitment greater than unfettered parental interest in child's welfare); *Addington v. Texas*, 441 U.S. 418 (1979) (requiring clear and convincing evidence for civil commitment); *see Smith v. Schlesinger*, 513 F.2d 462, 477 (D.C. Cir. 1975) ("[m]ental illness is unfortunately seen as a stigma"). *Compare* U.S. CONST. AMEND. IX *with Griswold v. Connecticut*, 381 U.S. 479 (1965) (right of privacy deeply rooted in our nation's philosophical and political heritage); *see Hearings on Psychological Testing Procedures and the Rights of Federal Employees Before the Subcom. on Constitutional Rights of the Senate Com. on the Judiciary*, 89th

inquiry,[27] it is reprehensible and unconstitutional to require a multi-jurisdiction attorney to undergo a trial

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Cong., 1st Sess. at p. 2 (1965); *In re T.R.*, 731 A.2d 1276 (Pa. 1999) (right of privacy precludes compelled psychological evaluation); *Long Beach City Employees Assoc. v. City of Long Beach*, 719 P.2d 660, 663 (Ca. 1986) (the mind is the quintessential zone of privacy). The right of bar examining committees to inquire into the mental health of applicants has been the subject of intense controversy. *See, e.g., Jon Bauer, The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L.Rev. 93 (2001); *Clark v. Virginia Bd. of Bar Examiners*, 880 F.Supp. 430 (E.D. Va. 1995); *Ellen S. v. Florida Bd. of Bar Examiners*, 859 F.Supp. 1489 (S.D. Fla. 1994) (rejecting Board's contention of want of jurisdiction); *In re Petition of Frickey*, 1994 WL 183523 (Minn. 1994) (removing mental health questions from application); *Matter of Respondent B*, 1991 WL 63245 (Cal. Bar Ct. 1991) (reversing order requiring attorney to undergo psychiatric examination).

[26]*See Deborah L. Rhode, Moral Character as a Professional Credential*, 94 Yale L.J. 491, 581-82 (1985) ("[C]urrent certification standards license untrained examiners to draw inferences that the mental health community would find highly dubious . . .. Even trained clinicians cannot accurately predict psychological incapacities . . . in most individual cases."); JAY ZISKIN, COPING WITH PSYCHIATRIC AND PSYCHOLOGICAL TESTIMONY 1-63 (3d ed. 1981); *see Bruce J. Ennis & Thomas R. Litwack, Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 Cal. L. Rev. 693 (1974) (citing extensive authority regarding inability of mental health professionals to make reliable predictions of future behavior); *accord Addington*, 441 U.S. at 429-30. *But see Thomas Pobjecky, Everything You Wanted to Know About Bar Admissions and Psychiatric Problems But Were Too Paranoid to Ask*, The Bar Examiner at 14 (1989) (Board's General Counsel since 1985 stating, based upon a 1979 National Institute of Mental Health survey, that "it seems logical to conclude that a significant number of bar applicants and attorneys are afflicted with psychiatric problems.").

[27]*In re Guardianship of Browning*, 568 So.2d 4 (Fla. 1990) (right of privacy consists of a "physical and psychological zone within which

by psychiatrist of unproven allegations as part of a bar character and fitness review.

Here, although Abe had no prior mental health history, the Board required Abe to undergo a psychological and psychiatric "evaluation" after reportedly obtaining an ex parte "individualized assessment" and "recommendation" from its "mental health consultant." R3.Supp, T2004, I8 (pp.1-3). After the "evaluation", however, Abe learned that the "consultant's" responses were "to [the Board's] specific questions concerning [Abe]", were "based on the information provided . . . by the [Board]", and that the "consultant" had "not drawn any conclusions concerning [Abe's] mental health." R3.Supp, T2004, I8 (pp.4-5).[28]

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an individual has the right to be free from intrusion or coercion, whether by government or by society at large."); *Singletary v. Costello*, 665 So.2d 1099 (Fla. 4th DCA 1996) (Right of privacy under FL. CONST. ART. I, SECT. 23 embraces more privacy interests and extends more protection than due process clause of federal constitution). Denying Abe this venerated Florida constitutional right arguably violates equal protection. *Matter of The Florida Bar*, 338 So.2d 205, 207 (Fla. 1976) ("We do not feel the rights afforded the accused attorney . . . should be sacrificed for . . . mere . . . expediency. . .."). *But see Thomas Pobjecky, The Demands of Due Process in Bar Admission Proceedings*, The Bar Examiner at 45 (1996) (Board's General Counsel since 1985 stating that "a bar applicant can be held to a higher standard of character and fitness than a practicing attorney.").

[28]Despite repeated and specific requests for *Willner* materials, before and after Abe's April 2005 *Willner* motion, R3.Supp, T2005, I32, the "specific questions" and other materials requested from the Board remain undisclosed. *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 103 (1963) (due process requires "confrontation and cross-examination of those whose word

Dr. "Mark", a board certified psychiatrist, reviewed over 2,000 pages of documents (as opposed to the Board psychiatrist's review of a "40-page investigative report"), spent 210 minutes with Abe (as opposed to the Board psychiatrist's 40 minutes), and had the benefit of the review and opinion of a licensed psychologist (who was, unlike the Board psychiatrist who was not, trained and qualified to interpret the full panel of psychological tests Abe was required to submit to), opined that the Board psychiatrist "stepped outside the bounds of her professional competency . . . act[ing] as judge and jury of [Abe] rather than . . . perform[ing] a professional and objective psychological evaluation. . .." R5, T30 (p.14).

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deprives a person of his livelihood"). *Compare Final Report and Recommendations of the Supreme Court Select Committee to Study the Florida Board of Bar Examiners*, § 5, 25 (1997) ("members differed on whether applicants should be given the right to respond to evidence used against them"). (http://www.floridabarwatch.org/docs/flreport.pdf) (March 1, 2007) *with Pobjecky, Demands of Due Process* at 46 (Board's General Counsel since 1985 stating that "[t]he need for bar examiners to maintain the confidentiality of particular information if they so choose is essential"). Here, the "consultant" responded to the "specific questions" about allegations that he had an "apriori suspicion" of, R3,Supp, T2004, I8, without having talked with Abe or his daughter, without having reviewed her inpatient or outpatient psychiatric records, R5, T17, 18 and without talking with her treating psychiatrists. The "consultant" apparently gave no weight to the fact that Abe took his daughter to a child psychiatrist after she began acting up when he remarried, R3, T23, admitted her to a children's inpatient psychiatric ward after she took her first overdose, R5, T18, and ultimately sent her to live with his ex-wife after her poor mother-daughter relationship was identified as a possible [illegible]r in her psychiatric problems. *Id.* The "consultant" also gave no weight to the fact that two state courts, after the period of the alleged conduct, awarded physical custody to Abe. *See* R3Supp.2, T2-4 (May 2003 application attachments).

Requiring a multi-jurisdiction attorney-applicant to undergo a medically invasive trial by psychiatrist of unproven allegations as a condition of processing his bar application is reprehensible and violates the Ninth and Fourteenth Amendments.

3. Second-guessing a parental decision, vetted with a psychiatrist, psychologist and three pastors, in a bar character review is constitutionally impermissible.

The Board's second-guessing of Abe's decision as to what was in the best interests of his children, made only after consulting medical professionals and senior pastors, violates Abe's First Amendment rights to freedom of speech, free exercise of religion and to petition for a redress, as well as fundamental parental rights under the substantive due process clause of the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

Moreover, whether the Board agrees with Abe's constitutionally protected religious beliefs or not,[29] Abe believes that his daughter is in danger of losing her eternal life. *Revelation* 21:8. Advancing Abe's parental interests by filing a lawsuit he resisted until the Board's actions forced his hand (not to mention vindicating his name for his own livelihood and ability to support his other daughter), are fundamental federal constitutional interests that cannot be used as a basis to deny him admission to the Florida Bar. The Board's second-guessing of Abe's constitutionally protected

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[29] *See West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in . . . religion. . .").

parental decisions, supported by his religious beliefs and the medical opinion of his daughter's treating child psychiatrist[30] is plainly unconstitutional and not rationally connected to his fitness or capacity to practice law. *Schware*, 353 U.S. at 238-39.

C. Denying due process so long that a bar application is rendered "stale" and retired under State rules, thereby substantively punishing the "foreign" attorney fifteen times more severely than its own attorneys for the same alleged act, violates the Fourteenth Amendment.

Denying an applicant a formal hearing (as the Board apparently does with some frequency[31]) on a bar application so long it becomes "stale" and is retired under State rules is not due process.

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[30]Dr. "Alexander" wrote: "The [Board] reportedly contends that [Abe's] decision to sue his daughter was not in her best interests. However, from a psychiatric standpoint, it is definitely in [Abe's daughter's] best interests to be required to report the truth under oath and to be placed in intensive counseling." R3, T23 (p. 6 of his medical opinion).

[31]*See, e.g., Lawrence v. Rigsby, et al.*, case nos. 05-16011-DD and 06-10776-DD (11th Cir. 2006) (attorney-applicant—3 years); *Stoddard v. Fl. Bd. of Bar Examiners*, 4:06CV-414 RH-WCS (N.D.Fla. 2006) (5 years); *Fla. Bd. of Bar Examiners re M.B.S.*, 2007 WL 268776 (Fla. 2007) (2 years); *compare Fla. Bd. of Bar Examiners ex rel. W.F.H.*, 933 So.2d 482 (Fla. 2006) (3 Florida Supreme Court Justices concurring in result (denial of admission) writing separately to note "regret" of "fundamental [un]fairness" of Board's actions). Nothing is intimated about the underlying merits of the foregoing.

Due process minimally requires "the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (quoted case omitted); *compare Barry v. Barchi*, 443 U.S. 55, 66 (1979) ("To be meaningful, an opportunity for a full hearing and determination must be afforded at least at a time when the potentially irreparable and substantial harm . . . can still be avoided. . .") (Brennan, J., concurring in part).

15 months to an investigative hearing is not meaningful, R5, B1, much less 45 months without a full formal due process hearing, particularly when the Board knew that Abe was going to lose his job unless it timely finished "processing" his application.[32]

Moreover, denying Abe, a multi-jurisdiction attorney, admission for 45 months for a single alleged "unprofessional, vexatious, harassing and abuse of process" lawsuit (not found to be so by a federal district court), when Florida sanctions its own resident attorneys only 60-91 days for the same proven conduct,

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[32]*See* R3Supp.1, T2004 I15; R5 (Hearing Transcript at p. 82, ll.11-12). *See also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 549 (1985) (When a man's livelihood is at stake, hardship "inevitably increases as the days go by") (describing damages Abe has suffered: "[a] child's education may be interrupted, a family's home lost, a person's relationship with his friends and even his family may be irrevocably affected.") (Marshall, J., concurring). Until the 18-month failure to process his Florida bar application (now 45 months) forced him to leave his plum job in Florida, Abe worked at a nationally ranked Florida specialty litigation firm in a position he could not have dreamed of as a boy growing up in the foothills of Georgia.

violates the Due Process and Equal Protection clauses.[33]

D. Denying bar admission to a multi-jurisdiction attorney-applicant, when no reasonable man reviewing the evidence can fairly find substantial doubts about the applicant's honesty, fairness and respect for others and for the laws of the state and nation, violates the Fourteenth Amendment.

What more can Abe do to prove he "is qualified by his learning and his moral character" to be admitted to the Florida Bar? *Baird*, 401 U.S. at 10.

He served his country honorably for almost 10 years, R5, T11, 1, was found fit to hold a Top Secret security clearance, R5, T4, earned a Good Conduct Award and other awards and commendations. R5, T11.

He graduated *Order of the Coif* from a top tier law school, R5, T5, joined a regional law firm in 1996 and published a law review article in a national law journal in 1997. R5, T1, 6.

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[33]*Compare* the 45-month denial of admission to Abe, a multi-jurisdiction attorney, *with Fla. Bar v. Richardson*, 591 So.2d 908 (Fla. 1991) (60-day suspension for filing frivolous lawsuit); *and Fla. Bar v. Kelly*, 813 So.2d 85 (Fla. 2002) (91-day suspension for filing frivolous federal lawsuit); *and Fla. Bar v. Committe*, 916 So.2d 741 (Fla. 2005) (91-day suspension and one-year probation for filing 2 frivolous lawsuits and abusing legal process); *and with Fla. Bar v. Walton*, --- So.2d ----, 2006 WL 3627029 (Fla. 2006) (91-day suspension and requirement to attend professional course for incompetent representation).

He is a member in good standing of three State Bars, R5, T3, the Bar of this Court, R5, T2, two federal courts of appeal and numerous other courts. *Id.*

He has provided character and fitness recommendations from a host of AV-rated attorneys he worked for and two internationally respected law professors, not to mention his 24-year history of exemplary service to country, family, employers and community, supported by evaluations and affidavits from a host of Naval officers, four professors, four ministers, several other lawyers, mothers of his children's best friends, a principal who taught and kept his children, his daughter's counselor, a psychologist and two psychiatrists, all of whom unqualifiedly support his character and fitness to practice law.

Is 1,100 years of collective human experience attesting to one's moral character and fitness not enough?

Again, Abe must ask: What more can he do to prove he "is qualified by his learning and his moral character" to be admitted to the Florida Bar?

The answer: Nothing. No reasonable man reviewing the evidence can fairly find that there are "substantial doubts about [Abe's] honesty, fairness and respect for the rights of others and for the laws of the state and nation." *Konigsberg*, 353 U.S. at 264.

Accordingly, the Fourteenth Amendment compels the State of Florida to admit Abe to the Florida Bar. *Id.*; *Baird*, 401 U.S. at 10.

CONCLUSION

Abe pleads with this Honorable Court of last resort to restore a measure of the stolen honor by vacating the Order of the Florida Supreme Court, ordering his admission to the Florida Bar and requiring Respondent to pay his costs in prosecuting this matter.

In the alternative, Abe would humbly ask the Court to grant this petition for briefing and oral argument on the merits, or, to grant, vacate and remand this matter with instructions to admit him to practice in Florida federal courts, to require the Board to prove facts by a preponderance of the evidence to a federal district court within 30 days showing why Abe should not be admitted to the Florida Bar, be awarded costs in prosecuting his bar application to date, and be permitted to pursue 42 U.S.C. § 1983 claims against those responsible.

Respectfully submitted, this the 5th day of March 2007.

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SUPREME COURT OF FLORIDA
FRIDAY, OCTOBER 6, 2006

CASE NO.: SC06-1044
Lower Tribunal No.: 92166

FLORIDA BOARD OF BAR EXAMINERS — RE: G.M.H

Petitioner(s) — Respondent(s)

CONFIDENTIAL

The Petition for Relief filed by G.M.H. in the above cause is hereby denied. Also denied is G.M.H.'s motion to strike the Florida Board of Bar Examiners' response to the petition.

LEWIS, C.J, and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO and BELL, JJ., concur.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

mc
Served:

ELEANOR MITCHELL HUNTER
ROBERT G. BLYTHE
G.M.H.

File No. 92166

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE:	APPLICATION OF	)
	G.M.H.	)
	FOR ADMISSION TO	)
	THE FLORIDA BAR	)
		)

CONFIDENTIAL

ORDER ON APPLICANT'S MOTION TO DISMISS

I have considered the Applicant's Motion to Dismiss dated April 28, 2005 and the Office of General Counsel's Response dated May 27, 2005. Based upon such consideration, it is determined that

☐ the Motion to dismiss is GRANTED, and the Specification shall be dismissed.

☑ the Motion to dismiss is DENIED, and the Specification shall be considered at a formal hearing. (Without prejudice to the Applicant's ability to present his case in opposition to the Specification.)

DONE and ORDERED at Miami, Florida this 1st day of June, 2005.

PAUL J. SCHWIEP, Chair
Florida Board of Bar Examiners

Copy to: G.M.H.
Robert G. Blythe, Dep. Gen. Counsel